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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,136	12/18/2001	Stephen W. Comiskey	53326.000012	9781

7590 04/28/2006

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EXAMINER
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PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 04/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20060420

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

Sue A. Purvis  
Primary Examiner  
Art Unit: 1734

Art Unit: 1734

1. The reply brief filed 31 March 2006 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

2. Responsive to the reply brief under 37 CFR 41.41 filed on 31 March 2006, a supplemental Examiner's Answer is set forth below:

On page 2 of the Reply Brief, applicant asserts the references were improperly combined and that on pages 9-10, the Examiner stated "it would have been obvious to one having ordinary skill in the art at the time the invention...to further decorate the applied patch."<sup>1</sup> Applicant asserts that this is a "clear example of improper hindsight." It is recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant goes on to assert that Essig fails to provide any teaching to modify the eye patch in Micchia. However, the examiner disagrees, Essig discloses there is a desire to have a decal which is worn on the body within view to include a particular hue or color. (See Essig, page 1, lines 63-65 and 87-92.) While the decal in Essig is used for a different purpose than the decal in Micchia, it is within the purview of one having ordinary skill in the art to look to other decals which are worn in plain view when considering the decal in Micchia. The fact that Essig is used for a different purpose is irrelevant and an artisan would not consider including the

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<sup>1</sup> Applicant does not detail if this statement was on pages 9 and 10 of an Office Action or the Examiner's Answer, and a search of the record has not produced any indication on where this statement is located.

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perfume feature of Essig in Micchia. Furthermore, just because the decal in Essig includes perfume does not make the other teachings of Essig any less valid.

Applicant asserts on page 3 of their reply brief that the examiner has "failed to even identify any perceived problem in Micchia and how a decorative butterfly tattoo can solve any problem in Micchia." As set forth in the Final Rejection and the Examiner's Answer, Essig teaches it is desirable to have a decorative decal when the decal is worn by a person and the decal is worn in plain view.

Regarding applicant's assertion that the examiner's interpretation of the claim language is "overly broad," it is the examiner's position that the term communication is a broad term and needs to be interpreted as such. The interpretation used by the examiner does not make it devoid of meaning as assert by the applicant, but gives it a broad meaning which is consistent with the broad term chosen by the applicant. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). (See MPEP 2111.)


The remaining arguments presented in the Reply Brief have been addressed in the Examiner's Answer and will not be revisited here.

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3. Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

  
**GREGORY MILLS**  
**QUALITY ASSURANCE SPECIALIST**

  
Sue A. Purvis  
Primary Examiner  
Art Unit 1734